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8 HENRY C. HAYES,  
9 Plaintiff,  
10 v.  
11 S. JOSEY,  
12 Defendant.

13 Case No. 19-cv-05216-WHO (PR)  
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**ORDER OF DISMISSAL**  
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17 The sole defendant in this action (S. Josey) remains unserved, the summons having  
18 been returned as unexecuted. (Dkt. No. 23.) The unexecuted summons states Josey is not  
19 employed at Pelican Bay State Prison. (*Id.*)

20 Plaintiff Hayes was ordered to, by July 1, 2021, either himself serve Josey with the  
21 summons and complaint, or provide the Court with sufficient information so that the  
22 Marshal is able to serve Josey. (Dkt. No. 24.) He was warned that failure to comply with  
23 these instructions would result in the dismissal of his suit. (*Id.*) Since that order was  
24 issued, there has been no response of any kind.

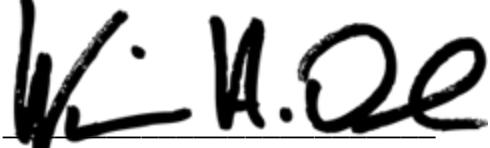
25 Hayes's complaint has been pending for over 120 days and he has not remedied the  
26 service problem as ordered. Therefore, his suit is subject to dismissal without prejudice as  
27 to the unserved defendant. *See Fed. R. Civ. P. 4(m).* Because Josey is the sole defendant,  
28 this means the suit is DISMISSED (without prejudice).

1       Because this dismissal is without prejudice, Hayes may move to reopen. Any such  
2 motion must contain the correct address for serving Josey. The motion to reopen must be  
3 clearly labelled as "MOTION TO REOPEN."

4       The Clerk shall enter judgment in favor of defendant and close the file.

5       **IT IS SO ORDERED.**

6       **Dated:** September 30, 2021

  
WILLIAM H. ORRICK  
United States District Judge